

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	SOLICITOR SEP 17 2007	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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U.S. PATENT & TRADEMARK OFFICE

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Southern District of Ohio on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. 3:07CV331	DATE FILED 9/11/2007	U.S. DISTRICT COURT Southern District of Ohio
PLAINTIFF H&S TOOL INC		DEFENDANT BENJAMIN R AUSTERMAN

PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 5,356,248	10/18/1984	H&S Tool Inc
2 5,542,177	8/6/1996	H&S Tool Inc
3 6,955,507 B2	10/18/2005	H&S Tool Inc
4		
5		


In the above—entitled case, the following patent(s)/ trademark(s) have been included:

DATE INCLUDED	INCLUDED BY
	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading

PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		
2		
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK James Bonini, Clerk	(BY) DEPUTY CLERK 	DATE SEP 12 2007
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Copy 1—Upon initiation of action, mail this copy to Director Copy 3—Upon termination of action, mail this copy to Director
 Copy 2—Upon filing document adding patent(s), mail this copy to Director Copy 4—Case file copy

33. As a proximate result of Austerman's infringement of the '507 patent, H&S has suffered damages.

WHEREFORE, H&S demands judgment:

- A. Declaring that the '248 patent is infringed by Austerman;
- B. Declaring that the '177 patent is infringed by Austerman;
- C. Declaring that the '507 patent is infringed by Austerman;
- D. Enjoining Austerman, his servants, employees, attorneys, licensees and assignees, and all of those persons in active concert or participant with them, from infringing the '248 patent, and from continuing to sell or offer to sell any products that infringe the '248 patent;
- E. Enjoining Austerman, his servants, employees, attorneys, licensees and assignees, and all of those persons in active concert or participant with them, from infringing the '177 patent, and from continuing to sell or offer to sell any products that infringe the '177 patent;
- F. Enjoining Austerman, his servants, employees, attorneys, licensees and assignees, and all of those persons in active concert or participant with them, from infringing the '507 patent, and from continuing to sell or offer to sell any products that infringe the '507 patent;
- G. Enjoining Austerman from disparaging the patent rights of H&S to H&S's customers and potential customers;
- H. Awarding to H&S compensatory damages, enhanced damages, and interest and costs pursuant to 35 U.S.C. § 284;

- I. Awarding to H&S its attorneys fees pursuant to 35 U.S.C. § 285; and
- J. Granting to H&S such other and further relief as this Court deems just.

Respectfully submitted,

/s Charles J. Faruki

Charles J. Faruki (0010417)

Trial Attorney

Donald E. Burton (0040553)

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H&S Tool, Inc.

JURY DEMAND

Plaintiff demands trial by jury on all issues so triable.

s/ Charles J. Faruki

Charles J. Faruki

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**U.S. District Court
Southern District of Ohio (Dayton)
CIVIL DOCKET FOR CASE #: 3:07-cv-00331-TMR
Internal Use Only**

H&S Tool Inc v. Austerman
Assigned to: Thomas M Rose
Cause: 35:271 Patent Infringement

Date Filed: 09/10/2007
Jury Demand: Plaintiff
Nature of Suit: 830 Patent
Jurisdiction: Federal Question

Plaintiff

H&S Tool Inc

represented by **Charles Joseph Faruki**
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500 Courthouse Plaza, SW
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V.

Defendant

Benjamin R Austerman

Date Filed	#	Docket Text
09/10/2007	<u>3</u>NOTICE, If case is to be referred, it will be Magistrate Judge Sharon L. Ovington (phil1,) Modified on 9/10/2007 to edit text (bev1,). (Entered: 09/10/2007)
09/10/2007	<u>1</u>	COMPLAINT against Benjamin R Austerman (Filing fee \$ 350 paid.), filed by Plaintiff H&S Tool Inc. (Attachments: # <u>1</u> Exhibit A# <u>2</u> Exhibit

		B# <u>3</u> Exhibit C# <u>4</u> Exhibit D# <u>5</u> Exhibit E) (bev1,) (Entered: 09/10/2007)
09/10/2007	<u>2</u>	Filing fee: \$ 350, receipt number 335918 (bev1,) Additional attachment (s) added on 9/10/2007 (bev1,). (Entered: 09/10/2007)
09/10/2007	<u>3</u>	Summons Issued as to Benjamin R Austerman. (bev1,) (Entered: 09/10/2007)
09/11/2007	<u>4</u>	Corporate Disclosure Statement by H&S Tool Inc. (Burton, Donald) (Entered: 09/11/2007)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION (DAYTON)

H&S TOOL, INC.
715 Weber Road
Wadsworth, OH 44281,

Plaintiff,

v.

BENJAMIN R. AUSTERMAN
620 N. State Route 201
Casstown, OH 45312,

Defendant.

CASE NO.

8:07 cv 0331

THOMAS M. ROSE

COMPLAINT FOR PATENT
INFRINGEMENT

(WITH JURY DEMAND)

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff H&S Tool, Inc. ("H&S") is an Ohio corporation having its principal place of business at 715 Weber Road, Wadsworth, Ohio 44281. H&S is a manufacturer and supplier of milling and machining tools.

2. Defendant Benjamin R. Austerman ("Austerman") is an individual residing in this district (in Miami County), at 620 N. State Rte. 201, Casstown, Ohio 45312. Austerman acts as an independent manufacturer's representative for Esco Tool, a competitor of H&S. He is not a customer of Esco Tool.

3. This action arises under the patent laws of the United States, specifically 35 U.S.C. §§ 271 et seq. This Court has subject matter over this action pursuant to 28 U.S.C. §§ 1331 and 1338.

4. Austerman is subject to personal jurisdiction in the Southern District of Ohio. Austerman has committed acts of infringement in this District and resides in this District.

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b) and 1400(b), as the defendant resides in this District and has committed acts of infringement in this District.

FIRST CLAIM FOR RELIEF -- PATENT INFRINGEMENT
(U.S. Pat. No. 5,356,248)

6. H&S incorporates the allegations of paragraphs 1 through 5 as if fully restated.

7. United States Patent No. 5,356,248 (the "'248 patent") entitled "Boiler Tube Bank Repair," was duly and legally issued on October 18, 1994 to inventor Mark W. Hillestad. An accurate copy of the '248 patent is attached as Exhibit A. H&S is the assignee of all right, title and interest in the '248 patent. H&S therefore has the right to sue for infringement of the '248 patent.

8. Esco Tool manufactures a product or products that are used to infringe one or more claims of the '248 patent.

9. Austerman has contributorily infringed the '248 patent, in that he has sold and offered to sell Esco products that are a material part of the invention claimed in the '248 patent, which products are not a staple article of commerce suitable for substantial noninfringing uses.

10. Austerman has also induced infringement of the '248 patent, in that he has actively engaged in encouraging direct infringement by his customers by selling or offering to sell Esco products with the intent that the subject matter claimed in the '248 patent would be used by his customers.

11. As a proximate result of Austerman's infringement of the '248 patent, H&S has suffered damages.

SECOND CLAIM FOR RELIEF -- PATENT INFRINGEMENT
(U.S. Pat. No. 5,542,177)

12. H&S incorporates the allegations of paragraphs 1 through 11 as if fully restated.

13. United States Patent No. 5,542,177 (the "'177 patent") entitled "Boiler Tube Bank Repair," was duly and legally issued on August 6, 1996 to inventor Mark W. Hillestad. An accurate copy of the '177 patent is attached as Exhibit B. H&S is the assignee of all right, title and interest in the '177 patent. H&S therefore has the right to sue for infringement of the '177 patent.

14. Esco Tool manufactures a product or products that infringe one or more claims of the '177 patent. For example, the Esco Tool product known as the Wart Membrane Removal Head infringes the '177 patent. That product is shown in Exhibit C attached to this Complaint.

15. Austerman has sold or offered to sell products of Esco Tool that infringe the '177 patent.

16. Austerman has also contributorily infringed the '177 patent, in that he has sold and offered to sell Esco products that are a material part of the invention claimed in the '177 patent, which products are not a staple article of commerce suitable for substantial noninfringing uses.

17. Austerman has also induced infringement of the '177 patent, in that he has actively engaged in encouraging direct infringement by his customers by selling or offering to sell Esco products, with the intent that the subject matter claimed in the '177 patent would be used by his customers.

18. Upon information and belief, Austerman has also misinformed customers or potential customers of H&S that H&S has "overstepped its boundaries" in asserting its patent rights, and that the patents-in-suit are invalid. Austerman has done so in order to induce the customer to do business with Esco Tool rather than H&S.

19. On or about March 2, 2007, H&S demanded that Austerman cease and desist his infringement of the '177 patent. A copy of the March 2, 2007 cease and desist letter served upon Austerman is attached as Exhibit D. A copy of that letter was sent by certified mail on or about March 2, 2007, and Austerman refused delivery. Subsequently, on or about May 31, 2007, after receiving notice that Austerman had refused delivery of the March 2, 2007 letter, H&S had Austerman personally served with a copy of that letter.

20. Upon information and belief, Austerman's infringing activities, in particular, his sales of and offers to sell infringing Esco products, continued after he became aware of H&S's cease and desist letter.

21. Austerman's infringement of the '177 patent has been and continues to be willful.

22. As a proximate result of Austerman's infringement of the '177 patent, H&S has suffered damages.

THIRD CLAIM FOR RELIEF -- PATENT INFRINGEMENT
(U.S. Pat. No. 6,955,507 B2)

23. H&S incorporates the allegations of paragraphs 1 through 22 as if fully restated.

24. United States Patent No. 6,955,507 B2 (the "'507 patent") entitled "Tube Milling Head," was duly and legally issued on October 18, 2005 to inventor J. Randall Hall. An accurate copy of the '507 patent is attached as Exhibit E. H&S is the assignee of all right, title and interest in the '507 patent. H&S therefore has the right to sue for infringement of the '507 patent.

25. Esco Tool manufactures a product or products that infringe one or more claims of the '507 patent. For example, the Esco Tool product known as the Wart Membrane Removal Head infringes the '507 patent. That product is shown in Exhibit B attached to this Complaint.

26. Austerman has sold or offered to sell products of Esco Tool that infringe the '507 patent.

27. Austerman has also contributorily infringed the '507 patent, in that he has sold and offered to sell Esco products that are a material part of the invention claimed in the '507

patent, which products are not a staple article of commerce suitable for substantial noninfringing uses.

28. Austerman has also induced infringement of the '507 patent, in that he has actively engaged in encouraging direct infringement by his customers by selling or offering to sell Esco products with the intent that the subject matter claimed in the '507 patent would be used by his customers.

29. Upon information and belief, Austerman has also misinformed customers or potential customers of H&S that H&S has "overstepped its boundaries" in asserting its patent rights, and that the patents-in-suit are invalid. Austerman has done so in order to induce the customer to do business with Esco Tool rather than H&S.

30. On or about March 2, 2007, H&S demanded that Austerman cease and desist his infringement of the '507 patent. A copy of the March 2, 2007 cease and desist letter served upon Austerman is attached as Exhibit C. A copy of that letter was sent by certified mail on or about March 2, 2007, and Austerman refused delivery. Subsequently, on or about May 31, 2007, after receiving notice that Austerman had refused delivery of the March 2, 2007 letter, H&S had Austerman personally served with a copy of that letter.

31. Upon information and belief, Austerman's infringing activities, in particular, his sales of and offers to sell infringing Esco products, continued after he became aware of H&S's cease and desist letter.

32. Austerman's infringement of the '507 patent has been and continues to be willful.